DUPLICATE

CITY OF SAN DIEGO

LEASE SURRENDER AND TERMINATION AGREEMENT

THIS LEASE SURRENDER AND TERMINATION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO ("CITY"), a California municipal corporation, and LUTHERAN SOCIAL SERVICES OF SOUTHERN CALIFORNIA ("LESSSEE"), a 501(c)(3) corporation (collectively referred to herein as the "Parties"), to be effective as of the date executed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

A. CITY owns that certain real property located at 4425 Bannock Avenue, San Diego, California 92117 (the "Property"), which is improved with a one-story building consisting of approximately 5,860 square feet, known as the Cathy Hopper Clairemont Friendship Center, as more particularly depicted in **Exhibit "A"** (the "Premises").

B. On July 11, 2017, CITY entered into a NON-PROFIT LEASE with Lutheran Social Services of Southern California, as filed with the San Diego City Clerk as Document No. RR-311221, allowing LESSEE to operate a senior community center from the Premises, which has not been amended ("Lease"). The Lease has a term of twenty (20) years, with two five (5) year options.

C. LESSEE has determined that the number of seniors frequenting the senior center is insufficient for LESSEE to economically and efficiently operate a senior center from the Premises as the Parties had originally contemplated. Therefore, the Parties have determined that an early termination of the Lease on the terms and conditions of this Agreement will best promote their interests by: (1) enabling the CITY to find a new productive use for the Premises; and (2) enabling the LESSEE to direct its resources to other charitable endeavors.

D. All capitalized terms used in this Agreement and not defined herein shall have the meanings assigned to those terms by the Lease.

AGREEMENT

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and based upon the foregoing Recitals which are incorporated herein by this reference, the Parties agree as follows:

1. **Termination of Lease.**

   a. Terminated Lease Provisions. Subject to Surviving Lease Provisions described in section 1.b. below, the Parties agree that the Lease shall terminate and be of no further force or effect as of the "Termination Date," as defined below in Section 2.

   b. Surviving Lease Provisions. The Parties acknowledge and agree that certain Lease

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FILED 06/29/2021
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

provisions were written to survive a termination of the Lease ("Surviving Lease Provisions"), and this Agreement shall not terminate any Surviving Lease Provision. Such Surviving Provisions shall remain in force and effect. Without limitation, the Parties agree that the Surviving Lease Provisions include: (i) the obligation of LESSEE to make all rental and other payments owing to CITY or to be otherwise paid by LESSEE (such as utilities or taxes) for all periods up to and including the Termination Date: (ii) LESSEE'S obligation to surrender the Premises to CITY free of damage and in good working order except as may be allowed under the Lease; (iii) CITY'S obligation to return to the LESSEE any security deposit in accordance with the Lease; and (iv) all indemnification obligations owed by one Party to the other Party, or on behalf of the other Party, as provided in the Lease.

c. Termination of Lessee's Interest in Premises. From and after the Termination Date, LESSEE shall have no interest in the Premises. The Parties agree that for any period following the Termination Date, CITY has the full and complete authority to re-lease and/or use the Premises in its sole and absolute discretion, without notice to or consent from LESSEE and without any payment or credit of any kind to LESSEE.

2. Termination Date.

The Termination Date shall be 11:59 p.m. on July 31, 2021, unless an earlier date and time for the termination is established pursuant to the following sentence ("Termination Date"). In their sole and absolute discretion, the Parties may agree to terminate the Lease prior to the above-specified date if each Party signs a memorandum of early termination specifying an earlier termination date. If rent payments were made by LESSEE for periods following the newly-identified termination date, those payments shall be returned to LESSEE on a pro-rated basis unless waived by Lessee in the memorandum of early termination

3. Surrender.

a. Required Actions. On or before the Termination Date, LESSEE shall: (a) vacate the Premises, deliver to CITY exclusive possession of the Premises free and clear of all personal property; (b) surrender to CITY the Lease and all rights of LESSEE in and to the Premises; and deliver to CITY all keys, passcards, parking cards and other building identification used to access the Premises, which are in the possession of LESSEE, its employees or its agents.

b. Personal Property; Removal by Termination Date. Lessee agrees and warrants that it shall remove all of its trash, valueless property, and personnel property from the Premises on or before the Termination Date. Without relieving LESSEE of its obligation to remove all of its trash, valueless property and personnel property from the Premises, LESSEE agrees that any of such items left on the Premises following the Termination Date (collectively, "Remaining Property Items") shall consist of, and shall be treated as, valueless property or trash not entitled to the noticing rights or rights afforded by Civil Code section 1993 et seq. Further, should Civil Code section 1993

set seq. be deemed to apply to any Remaining Property Items, LESSEE waives any right it may have to receive notice, recover, or obtain payment for the Remaining Property Items pursuant to Civil Code section 1993 et seq. All Remaining Property Items shall be conclusively considered to be intentionally and knowingly abandoned by LESSEE. CITY may be disposed of in any manner whatsoever without notice and without accounting to LESSEE or any other person or entity or being liable in any way to LESSEE or any other person or entity for such disposition. LESSEE shall immediately upon demand reimburse CITY for any costs or expenses incurred by CITY in connection with disposing of any such property abandoned by LESSEE. Notwithstanding the preceding, if CITY identifies items within the Remaining Property Items which do not reasonably appear to be trash or valueless, CITY may, but is under no obligation to: (i) provide notice to LESSEE of such items left on the Premises in the manner provided in Civil Code section 1993 et seq. (and follow procedures found therein); or (ii) negotiate a purchase one or more Remaining Property Items which shall be memorialized in a bill of sale.

4. **LESSEE's Release of Claims.** With the exception of the obligations called for under this Agreement, the rights and remedies herein and subject to the reservation of rights set forth herein, LESSEE and its officers, directors, shareholders, employees, partners, representatives, agents, attorneys, insurers, corporate affiliates, successors, heirs and assigns (the "LESSEE Entities") hereby release CITY and CITY'S officers, directors, shareholders, employees, partners, representatives, agents, attorneys, insurers, successors and assigns from any and all claims, demands, causes of action, liabilities and obligations, damages, attorneys fees and costs, whether known or unknown, arising from or related to the Lease and/or related to the use, occupancy and possession of the Premises by LESSEE.

5. **General Release.** As further consideration for this Agreement and the obligations thereunder, and subject to the terms and conditions set forth herein-above and excepting the obligations, rights and remedies contained in and arising out of this Agreement, LESSEE expressly, knowingly and intentionally waives the protections afforded by Civ. Code, § 1542, which provides as follows:

   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6. **LESSEE Representations and Warranties**. LESSEE makes the following representations and warranties to CITY, which shall survive LESSEE's surrender of the Premises and the Termination Date that:

   a. LESSEE is the legal and equitable owner of the leasehold interest created by the Lease with full power and authority to terminate the Lease without the consent of any person, firm or entity.

b. LESSEE has not heretofore assigned or transferred hypothecated, pledged, mortgaged, subleased, or in any way encumbered any portion of or interest in the Lease. Other than Lessee, no person, firm or entity has any right, title or interest in the Lease

c. No filed, pending, or potential legal claims of any kind related to the Lease or the Premises exist as of the date of this Agreement. All subleases, concessions, and other rights of use and occupancy of the Premises, insurance policies, and maintenance and service contracts which, prior to this Agreement, CITY has not elected in writing to continue, have been legally terminated as of the Termination Date and all charges paid in full and no cause of action against CITY exists as of the date of this Agreement nor will exist subsequent to this Agreement in any party to a sublease, concession, agreement for use, or occupancy or insurance policy, or maintenance or service contract, based on inducing the breach of contract with respect to it.

d. There are no outstanding contracts for the supply of labor or materials as of the date of this Agreement, and no work has been done or is being done nor have materials been delivered to the Premises for which full payment has not been made or for which a mechanic's lien or stop notice could be asserted or foreclosed under the laws of California.

e. All taxes, charges, assessments, levies, or impositions required by the Lease to be paid by LESSEE have been paid in full, except those charges approved by CITY and prorated to the Termination Date.

f. The Premises are now and will, on the Termination Date, be clean and in good condition and repair, reasonable wear and tear excepted.

g. No trash, abandoned personal property, or other personal property of LESSEE or its employees, contractors, agents, or invitees shall remain on the Premises as of the Termination Date except as the City may authorize in writing.

LESSEE solely possesses the legal and equitable title to all personal property that will remain on the Premises as of the Termination Date, whether or not the City has authorized such property to remain on the Premises, and none of that property has been encumbered or pledged to secure any debt or obligation.

7. **Indemnity.** LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representative and agents ("City Indemnified Parties") harmless from and against any and all claims asserted and liability established for any breach by LESSEE of the representations and warranties made in this Agreement; from LESSEE's termination of the Lease; from any lien, charge, encumbrance, or claim against the Premises; from any claim against the City Indemnified Parties for which Lessee is responsible; or from any damages or injuries to any person or property, including injury to LESSEE's officers, employees, agents, invitees or contractors, which arise out of or are in

any manner directly or indirectly connected with any person or legal entity claiming to hold any right under the Lease and/or in the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

8. Miscellaneous.

a. Construction. The provisions of this Agreement, or this Agreement as a whole, shall not be construed against the drafting party.

b. Waiver. No breach of any provision of this Agreement shall be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision.

c. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the matters covered in this Agreement and supersedes any and all prior oral or written understandings, representations, warranties and agreements between the parties pertaining to this Agreement. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever, except by a writing duly executed by all of the parties affected by such modification or by their authorized representatives.

d. Further Assurances. The Parties hereby agree to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement.

e. Attorneys' Fees. Should any dispute arise between the parties hereto or their legal representatives, successors and assigns concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such dispute shall be entitled, in addition to such other relief that may be granted, to recover reasonable attorneys' fees and costs in connection with such dispute.

f. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representative, successors and assigns.

g. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California.

h. Titles. The section titles in this Agreement are used for the convenience of the Parties and are not to be taken as part of the instrument or used to interpret this Agreement.

i. Authority. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf

of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

j. Counterparts; Facsimile or Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. The Parties agree: (a) to deliver and accept signatures on or pursuant to this Agreement by facsimile, e-mail, or electronic means (including digital signatures) except when original signatures are required by applicable law or for recording purposes; and (b) that signatures delivered by facsimile, e-mail, or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

In witness whereof, this Agreement shall be effective as of the Effective date.

Date: 10 May 2021

LUTHERAN SOCIAL SERVICES OF SOUTHERN CALIFORNIA, a 501 (c)(3) corporation

BY: _____
Name: LaShaRnda Beckwith
Title: President & CEO

Date: 7-29-21

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Penny Maus
Director, Real Estate Assets

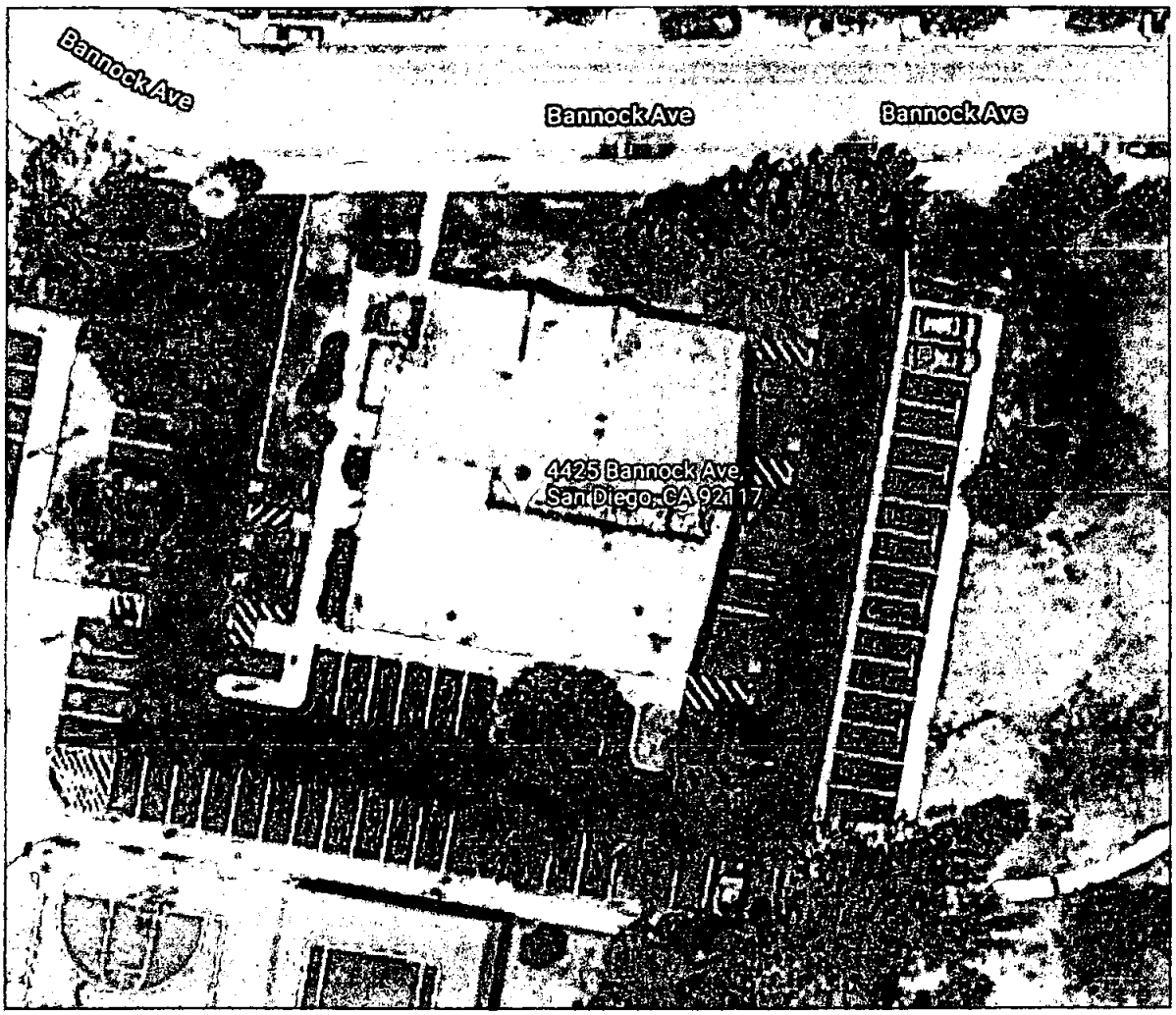
Approved as to form this 5th day of August, 2021.

MARA W. ELLIOTT, City Attorney

BY: _____
Name: Jonathan Stone
Title: Deputy City Attorney

EXHIBIT "A"

THE PREMISES



(R-2021-514)

RESOLUTION NUMBER R- 313621

DATE OF FINAL PASSAGE JUL 16 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO APPROVE THE LEASE SURRENDER AND TERMINATION AGREEMENT WITH LUTHERAN SOCIAL SERVICES OF SOUTHERN CALIFORNIA FOR THE PROPERTY LOCATED AT 4425 BANNOCK AVENUE.

WHEREAS, the City of San Diego (City) owns the real property commonly known as the Cathy Hopper Clairemont Friendship Center, located at 4425 Bannock Avenue (Property); and

WHEREAS, on July 11, 2017, the City Council, by San Diego Resolution R-311221 (Jul. 25, 2017), approved a certain Non-Profit Lease for the Property (Lease), between the City as lessor and Lutheran Social Services of Southern California, a non-profit California corporation as lessee (Lessee) with an initial term expiring on July 31, 2037; and

WHEREAS, Lessee initially used the Property as a senior center until Lessee was forced to permanently discontinue operations due to the pandemic and insufficient patronization; and

WHEREAS, Lessee has requested to terminate the Lease and surrender the Property to the City as of July 31, 2021, because Lessee can no longer operate a senior center from the Property; and

WHEREAS, the City and Lessee have negotiated the terms of a Lease Surrender and Termination Agreement (Agreement) to accomplish the Lease termination and the surrender of the Property, and a copy of the Agreement is included in the backup materials accompanying this Resolution; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. The Agreement is approved.

2. The Mayor, or designee, is authorized, on the City's behalf, to sign the Agreement and any other documents reasonably necessary to effectuate the intent of the Agreement. A copy of the signed Agreement shall be placed on file as Document No. RR- 313621 in the Office of the City Clerk.

APPROVED: MARA W. ELLIOTT, City Attorney

By */s/ Jonathan Stone*
Jonathan Stone
Deputy City Attorney

JS:cm
June 15, 2021
Or.Dept:READ
Doc. No.: 2689379

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 06/29/2021.

ELIZABETH S. MALAND
City Clerk

By */s/Linda Irvin*
Deputy City Clerk

Approved: 7/6/21
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUN 29 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage JUL 16 2021.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Linda Truex, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313621

Passed by the Council of The City of San Diego on June 29, 2021, by the following vote:

YEAS:	**LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, CATE, CAMPILLO, MORENO, ELO-RIVERA.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Linda Irwin, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of RESOLUTION NO. **R-313621**, approved on **June 29, 2021**. The date of final passage is **July 16, 2021**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Linda Irwin, Deputy